

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE: § CHAPTER 11
§
SHERWIN ALUMINA COMPANY, LLC, § CASE NO. 16-20012
ET AL. §
§ (Jointly Administered)

MOTION OF OUTOTEC (USA) INC. FOR RECLAMATION OF GOODS

Outotec (USA) Inc. (“Outotec”), a creditor in the above-referenced matter, files this motion for reclamation of goods, and respectfully states as follows:

RELIEF REQUESTED

1. On December 11, 2015, Sherwin Alumina Company, LLC (the “Debtor”) received goods it purchased from Outotec for the invoiced amount of \$550,825.14 (the “Goods”), but did not pay the invoice in full. *See* accompanying Declaration of Paul Sohlberg (the “Sohlberg Declaration”) at ¶ 2.

2. On February 1, 2016, after the Debtor filed for bankruptcy, Outotec sent a written demand seeking the reclamation of the Goods. *See* Sohlberg Declaration, ¶ 3, Exhibit A. The Debtor did not respond to the demand. *See id.*, ¶ 3.

3. Outotec accordingly requests that this Court enter an order pursuant to section 546(c) of the Bankruptcy Code directing the Debtor to return the Goods.

4. Section 546(c) of the Bankruptcy Code gives sellers of goods the right to reclaim goods sold “to the debtor, in the ordinary course of such seller’s business ... if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title ... [and] such seller demands in writing reclamation of such goods (A) not later than 45 days after the date of receipt of such goods by the debtor; or (B) not later than 20

days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.” 11 U.S.C. § 546(c)(1)(A) and (B). The twentieth day after the Debtor’s January 11, 2016 petition date was Sunday, January 31. Rule 9006(a)(1)(C) of the Federal Rules of Bankruptcy Procedure instructs that if the last day of a time period “is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.” Accordingly, Outotec’s February 1, 2016 demand letter was timely sent under 11 U.S.C. § 546(c)(1)(B).¹

NOTICE

5. Notice of this motion has been provided by email or U.S. first class mail to the Debtors and their counsel, the parties on the Debtors’ Master Service List, counsel to Commodity Funding, LLC, and the Office of the United States Trustee. Outotec submits that no further notice is necessary.

WHEREFORE, Outotec respectfully requests that this Court enter an order directing the Debtor to immediately return the Goods to Outotec.

¹ Concurrently with this motion, Outotec is filing a limited objection to the *Emergency Motion of Sherwin Alumina Company, LLC et al., for Entry of Interim and Final Orders (i) Authorizing Debtors to (a) Obtain Postpetition Secured Financing and (b) Utilize Cash Collateral, (ii) Granting Liens and Providing Superpriority Administrative Expense Claims, (iii) Granting Adequate Protection to Prepetition Lender, (iv) Modifying the Automatic Stay, and (v) Scheduling a Permanent Finance Hearing Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, and 9014* [D.E. 26]. As described in its limited objection, Outotec does not believe that its Goods are the subject of any pre-petition or post-petition security interest that would implicate section 546(c)(1), but out of an abundance of caution, seeks to reserve its rights while its reclamation demand is outstanding.

Dated: February 8, 2016

Respectfully submitted,

COUNSEL FOR OUTOTEC (USA) INC.

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